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April 14, 2010

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attention: Docket No. R-1384

Re: Proposed Rule Implementing CARD Act Requirements on Reasonable Penalty
Fees and Reevaluations of Interest Rate Increases

Dear Ms. Johnson:

This comment letter is submitted on behalf of Appleseed, the national office of a nonprofit network of 16 independent public interest justice Centers in the U.S. and Mexico, in response to the Proposed Rule ("Proposed Rule") issued by the Board of Governors of the Federal Reserve System ("Board") to implement credit card provisions of the "Credit Card Accountability Responsibility and Disclosure Act of 2009" ("CARD Act" or "Act").

Appleseed appreciates the opportunity to comment on this important matter. Given the passage of the CARD Act of 2009, we believe it is essential that the Board seek to promote transparency, simplicity, fairness, accountability and access in the market for credit card products and services by requiring credit card issuers to engage in fair dealings and transparency in pricing.

Appleseed and its Centers are dedicated to building a society where opportunities are genuine, access to the law is universal and equal and government advances the public interest. Appleseed has convened industry, regulatory and community stakeholders and piloted a fair exchange disclosure template for remittances, conducted numerous studies and has come to be guided by a set of "Fair Exchange Principles" which we believe produce optimal consumer understanding of complicated financial products and promote a comparative, cost-based analysis of products.

In this regard, Appleseed applauds the Board for its efforts to ensure:

- Transparency: Disclosure of all costs, including those fees embedded in the quoted costs for financial products or services, exchange rate fluctuations and other indirect costs, should be provided to consumers in a clear and conspicuous manner that is designed to call attention to the significance and magnitude of the information;
- Simplicity: Consumers should have, understand and be able to use the information to make responsible decisions about consumer financial products or services, including the purchase and use of gift cards and certificates;
- Fairness: Consumers should be protected from abuse, deception, discrimination and financial pitfalls;
- Accountability: Markets for consumer financial products and services should support true competition and remain sustainable and innovative; and
- Access: Traditionally underserved consumers and communities must have continued access to financial services.

Further information on Appleseed's Fair Exchange pilot can be found at <http://www.appleseednetwork.org/Portals/0/Documents/Publications/FE%20Final.pdf>

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Appleseed has the following specific comments on the Proposed Rule:

**REASONABLE AND PROPORTIONAL PENALTY FEES
(SECTION 226.52)**

Section 226.52(b) of the Proposed Rule is designed to implement the CARD Act provision prohibiting an issuer from imposing a penalty fee or charge, such as a late fee, returned check fee, or an over-the-limit fee, in connection with a violation of a credit card agreement unless the penalty fee is "reasonable and proportional" to the violation. The CARD Act directed the Board to establish standards for implementing this requirement.

Specifically, the Proposed Rule would prohibit an issuer from imposing a "[penalty] fee for violating the terms or other requirements of a credit card account ... unless the dollar amount of the [penalty] fee is based on one of the determinations" set forth in the Proposed Rule.

- Consistent with the principles of transparency and fairness, Appleseed supports this aspect of the Proposed Rule. Given the fact that penalty fees, such as late fees, can exasperate existing financial problems, Appleseed supports a

requirement that an issuer only impose penalty fees that are reasonable and proportional to the violation of the account term.

- While Appleseed supports the Proposed Rule, we think it important that the Board monitor the impact the final rule has on traditionally underserved consumers and communities that have limited access to financial services. While transparency and fairness might translate to more expensive credit, it is important that, consistent with the Community Reinvestment Act and other fair lending laws, traditionally underserved consumers continue to have access to credit, including credit cards that allow consumers to finance the purchase of goods or services. Accordingly, the Board should review and report on an annual basis how the Rule benefits or harms such consumers.

Determinations Based on Costs and Deterrence

The CARD Act requires the Board to consider costs incurred by the issuer, deterrence of a violation by the consumer, conduct of the consumer and other factors. Specifically, the Proposed Rule would permit an issuer to base the amount of a penalty fee on the total costs incurred by the issuer as a result of that type of violation or, as an alternative, on the amount reasonably necessary to deter that type of violation.

In this regard, the supplemental information accompanying the Proposed Rule the Board states “to the extent an issuer cannot recover all of its costs from violations...the Proposed Rule permits the issuer to recover those costs by spreading them evenly among all other consumers who engage in that type of violation...or to build those costs into upfront rates and fees, which will result in greater transparency for consumers regarding the cost of using their credit card accounts.”

- While Appleseed generally supports the Proposed Rule that would allow an issuer to base its penalty fees on total costs incurred or on deterrence, Appleseed is concerned about “the spreading” of costs to consumers who do not violate the terms of their agreements.
- We believe that spreading the costs among all consumers by charging higher upfront costs is unfair to consumers who make payments in accordance with their account terms.
- In this regard, the Board should ensure that consumers who pay on time, who do not exceed their established credit limits and who generally follow the terms of their accounts are not penalized and effectively forced to incur higher costs to obtain credit.

REEVALUATION OF RATE INCREASES

(SECTION 226.59)

Section 226.59 of the Proposed Rule implements the CARD Act provision requiring an issuer who increases the rate on an account based on risk factors to consider changes in “such factors” when subsequently determining whether to reduce the rate on that

account. Specifically, an issuer would be required to review, every six months, any account where the rate has been increased since January 1, 2009. The CARD Act expressly states that this provision should “not be construed to require a reduction in any specific amount”; however, the Proposed Rule would nevertheless require an issuer to maintain reasonable written policies and procedures designed to carry out the requirement to reevaluate rate increases.

- Consistent with principles of fairness, Appleseed supports the requirement that issuers be required to review rate increases on an account to determine whether rate decreases are warranted.
- Requiring issuers to maintain written policies and procedures in connection with the reevaluation of a rate increase and, as appropriate, reduce rates on an account, will likely result in greater accountability for financial institutions and ultimately more equitable repricing of accounts.

DISCLOSURE OF REASONS FOR RATE INCREASES

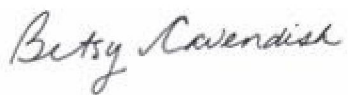
(SECTIONS 226.9(c) AND 226.9(g))

Section 226.9(c)(2)(iv)(A)(8) of the Proposed Rule would implement the CARD Act requirement that an issuer disclose the reasons for a rate increase on an account in the 45-day change in terms notice. Specifically, the Proposed Rule would require an issuer to disclose up to four principal reasons for the rate increase on an account, listed in order of importance. An issuer would not be permitted to disclose more than four reasons.

- Requiring an issuer to disclose the reasons for a rate increase will call a consumer’s attention to the importance and significance of his or her actions, as well as inform a consumer of the factors that impact the cost of credit.
- Furthermore, this requirement is consistent with one of the hallmarks of Appleseed’s Fair Exchange Principles, which is transparency. That is, financial institutions will have to be forthcoming in their reasons for repricing a consumer’s account. Moreover, Appleseed believes that providing consumers with a better understanding of the factors that influence the cost of credit will help consumers make informed decisions and enable consumers to better assess the costs associated with credit cards and the consequences of their actions.

Thank you for your consideration of these comments and for your work promoting transparency and fairness in credit card transactions.

Respectfully submitted,



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